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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,129	12/27/2005	Frans Brinkmann	MULLE42.001APC	1952
20995 7590 05/12/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER WINDELL, MARK R				
ART UNIT 3635		PAPER NUMBER		
NOTIFICATION DATE 05/12/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/522,129

**Applicant(s)**

BRINKMANN, FRANS

**Examiner**

MARK R. WENDELL

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3-9 is/are allowed.
- 6) ☐ Claim(s) 2, 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ono (US 6161359) in view of D'Alessio et al. (US 4462197). It is described above what is disclosed by Ono, however Ono does not teach a foot element with welded vertical reinforcements and a butterfly nut mounted on the spindle. D'Alessio illustrates in Figure 8:

- A spindle provided with a thread being capable of carrying a high load, which is provided at its upper end with guiding strips (43) serving for the inner concentric positioning and mounting of the spindle in a lower and/or upper end opening of the tube-shaped upright element, which spindle is provided at its bottom end with means (49, 45, 46) for positioning and anchoring in,
- A foot element (Figure 8) consisting of a foot plate which at its upper part is provided with welded vertical reinforcement plates (48) and further is provided with means (42) for anchoring of the free end of the spindle,

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- A butterfly nut (49), mounted on the spindle (47), comprising a hollow cylindrical housing internally provided with screw thread (hollow area encompassing the spindle) while its bottom part is provided with a plurality of radially protruding handgrips (flanges of 49) for the adjustment of the upright assembly at the desired height and for fast dismounting by means of its rotation, having mounted on its top side a free rotatable ring (45), which on its outside is provided with a set of sheet shaped screw holders welded thereto for locking screws (46) for anchoring into the lower end opening of the tube-shaped upright element; in such a way, that the butterfly nut may be mounted to the lower and/or upper side of the upright element without blocking the rotation of the butterfly nut.
- A coupling piece and anti-flexure piece (25, 26, 43) positioned on the spindle and comprising a hollow cylindrical housing (25, 26) internally provided with guiding strips (43) for its vertical guiding on the spindle.

It would have been obvious to one having ordinary skill in the art at the time of invention to modify the assembly of Ono with the footing apparatus of D'Alessio coupled with the 4 coupling members illustrated in Ono Figure 15 in order for better stability and easy manipulation (raising or lowering).

Regarding claim 10, the examiner notes that it would have been obvious to one having ordinary skill in the art at the time of invention because applicant does not

state criticality for necessitating the exact lengths and diameters provided in claim 10. Also, the prior art of record (Ono in view of D'Alessio) is capable of being constructed with the length and diameter limitations as claimed. The examiner further notes that it would have been obvious to one having ordinary skill in the art at the time of invention to construct a structure with the upright elements being of the claimed lengths merely by the fact that applicant admitted that they are "standard" lengths and the broad range of lengths further supports the fact that applicant does not state criticality for that specific feature. In further regards to claim 10, D'Alessio illustrates in Figure 8 the spindle provided with quadratic threading.

Regarding claim 11, the examiner notes that it would have been obvious to one having ordinary skill in the art at the time of invention because applicant does not state criticality for necessitating the exact lengths and diameters provided in claim 11. Also, the prior art of record (Ono in view of D'Alessio) is capable of being constructed with the length and diameter limitations as claimed. The examiner further notes that the lack of criticality is further supported by the applicant defining a workable range for such measurements in claiming "approximate" lengths. Also, in regards to the locking clip for the locking pin, it would have been obvious to one having ordinary skill in the art to use a typical cotter pin assembly which is well known in the art, in order for the pin to stay located in the borehole.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ono (US 6161359) in view of D'Alessio et al. (US 4462197) as applied to claim 2 above, and in further view of Van Meter (US 4036466). It is described above what is disclosed by Ono and D'Alessio, however neither teaches having a borehole in the footing or reinforcing member. Van Meter illustrates in Figure 1 boreholes (50) located on the reinforcement plates on either side of the rectangular central part. It would have been obvious to one having ordinary skill in the art at the time of invention to modify the footing structure of Ono in view of D'Alessio to include the boreholes of Van Meter in order to provide attachment means for securing the footing to another stable structure.

***Allowable Subject Matter***

Claims 1, 3-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The examiner notes that most of the coupling structure could be found in the prior art cited, however the orientation and positions of the claws cited in the claims (claim 3 and its dependents) could not be found in the cited prior art. Also, the motivation and feasibility of coupling the structures together could not be ascertained by the examiner.

Regarding claim 1 and its dependents, the amended limitation of the C-shaped member encompassing the circumference of the upright element rendered the

claim allowable along with the limitation of the C-shaped coupling members encompassing the circumference of the coupling part. The cited prior art, which the examiner believes to be the closest related art in the case does not teach these limitations in the disclosure nor would it be obvious to one having ordinary skill in the art to modify the reference in view of other prior art.

Regarding claim 4 and its dependents, the amended limitation of the ring being on the tube profile, which is the connection piece rather than the leg itself renders the claim allowable over the cited prior art. Ono illustrates a ring on the leg itself rather than on the connection piece.

### ***Response to Arguments***

Applicant's arguments filed 3/14/08 have been fully considered but they are not persuasive. Regarding claim 2, the entire argument is based on the fact that Ono does not disclose all of the features of the claim. The examiner acknowledged this fact and originally made a 103 rejection based on Ono in view of D'Alessio. It is clearly stated in the original Office Action (which has been repeated above) that the deficiencies of Ono were suggested by D'Alessio.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schworer (US 5388666) teaches a support scaffold with

C-shaped coupling members. Johnston (US 4841708) teaches a bolted scaffolding frame. Johnston (US 4787183) teaches an adjustable truss arrangement. Morris (US 4026079) teaches an adjustable shoring scaffolding arrangement. Bowen et al. (US 3565501) teaches an adjustable footing for scaffolding. Squire (US 3190405) teaches an extendable shore with footings. Masuda et al. (US 5367852) teaches a support system with adjustable legs.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MARK R. WENDELL** whose telephone



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number is (571)270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/  
Supervisory Patent Examiner, Art  
Unit 3635

/M. R. W./  
Examiner, Art Unit 3635  
May 6, 2008